IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.657 OF 2006

Shri Ashok Chhajed ...Appellant

Versus

Praful Jairam Panwala & Ors. ...Respondents

Shri Ashok M. Saraogi for the Appellant.

Shri Vinay J. Hegde for the Respondent Nos.1, 2(1), 2(2) and 2(c) and 2 (d), 3 & 4.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 26, 2007.

P.C.:

1. Heard learned Advocates appearing for the parties. The Appellant is the second Defendant who has taken an exception to the order of temporary injunction passed by the trial Court on 14th August, 2006. The material part on the order of temporary injunction reads thus:

> "2. Defendant No.2 is restrained by temporary order and injunction of this Court from disturbing the peaceful occupation and possession of the plaintiffs' respective structures in their respective possession, more particularly, of the measurement described in the Court Commissioner's

report dated 27.1.2006 and not to demolish the same and not to withhold any essential amenities namely water supply, electricity supply, as well as facility of WC, save and except by following due process of law.

3. The defendant No.2 is at liberty to demolish the newly constructed toilet, which was constructed pursuant to the IOD and plan approved on 29th September, 2004, as the said IOD and plans are cancelled".

2. My attention has been invited to the orders dated 15th March, 2007 and 05th April, 2007 passed by this Court. There is a serious dispute as to whether there is a valid permission for construction of a newly constructed toilet referred to in clause No.3 above.

3. The learned counsel appearing for the Appellant submitted that now a scheme for redevelopment of the said slum has been sanctioned. He submitted that in view of the sanction of the scheme, the Civil Court could not have granted injunction. He submitted that now the rights of the parties will be governed by the

relevant provisions which apply to the scheme. He, therefore, submitted that the order of injunction deserves to be set aside.

4. I have considered the submissions. The clause No.2 of the operative part of the impugned order protects the respective structures of the original Plaintiffs and essential amenities such as water supply, electricity supply and facility of W.C with a rider that it will be open for the authorities to follow due process of law for evicting the original Plaintiffs. Therefore, it is obvious that if the competent authority concerning the redevelopment scheme has a power to evict the Plaintiffs, the competent authority will be entitled to initiate appropriate proceedings for eviction against the Plaintiffs in accordance with law.

5. The submission made before this Court on earlier date was that now the toilet block constructed by the Appellant which is referred to in clause No.3 of the operative part of the impugned order has a valid sanction of the authorities. As indicated in the orders earlier passed by this Court, there is a serious dispute about the said factual aspect. If the Appellant has obtained sanction for the toilet block which is already constructed the Appellant can always move the trial

Court for appropriate modification of the clause No.2 of the operative part of the order.

6. Hence, I pass the following order:

(i) Subject to what is stated above, the Appeal is dismissed.

(ii) Hearing of the suit is expedited and the trial Court will dispose of the suit as expeditiously as possible.

(iii) All contentions of the parties on merits are expressly kept open.

JUDGE